

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sruthi Venigalla	Team: Squad #13	CCRB Case #: 201506581	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/25/2015 3:30 AM	Location of Incident: 1440 Castle Hill Avenue	Precinct: 43	18 Mo. SOL 1/25/2017	EO SOL 1/25/2017	
Date/Time CV Reported Mon, 07/27/2015 11:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 08/07/2015 1:58 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Alverny Tavarez	04865	948142	SOD SRG
2. POM Mauricio Thomas	26957	945466	SOD SRG

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kia Kelly	18188	936852	SOD SRG

Officer(s)	Allegation	Investigator Recommendation
A.POM Mauricio Thomas	Force: PO Mauricio Thomas used physical force against § 87(2)(b)	
B.POM Alverny Tavarez	Force: PO Alverny Tavarez used physical force against § 87(2)(b)	
C.POM Alverny Tavarez	Force: PO Alverny Tavarez used pepper spray against § 87(2)(b)	

## Case Summary

On July 27, 2015, § 87(2)(b) filed a complaint via telephone with the Internal Affairs Bureau (IAB). The Civilian Complaint Review Board (CCRB) received this complaint under IAB log number 15-22078 on August 7, 2015. § 87(2)(b) appeared at the CCRB on August 19, 2015 and provided a statement which is summarized below.

On a date that the investigation determined was July 25, 2015, at approximately 3:30 a.m., § 87(2)(b) and his friends, § 87(2)(b) (Hispanic man), § 87(2)(b) (old Hispanic man), and § 87(2)(b) (last name unknown, § 87(2)(b) old black man) were standing and talking on the corner of Castle Hill Avenue and Lyon Avenue in the Bronx. § 87(2)(b) stated that at the time of the interaction, the lighting was dim; there was little vehicular traffic, and no pedestrian traffic. He described the location as both residential and commercial. No other person approached this group while they were at this location for approximately an hour.

§ 87(2)(b) who was wearing gray cargo shorts, a black sleeveless shirt and black sneakers, was holding a black plastic bag that contained an alcoholic beverage, (Great Stallion). § 87(2)(b) who stated that the beverage was in a white can, described the can as resembling an Arizona Iced Tea. Neither he nor his friends consumed any drugs or alcohol prior to this incident. § 87(2)(b) was about to open the can, when he observed a marked patrol car coming from the direction of East Tremont Avenue.

The marked patrol car, the number of which he did not observe, pulled up next to § 87(2)(b). The driver of the vehicle, who was described as a uniformed Hispanic man, approximately 30 years old, with a muscular build, shaved bald head and stubble on his face, and identified by the investigation as PO Mauricio Thomas of the Bronx Strategic Response Group, asked § 87(2)(b) “What’s in the bag?” § 87(2)(b) replied, “An Arizona Iced Tea.” There was a brief pause, approximately 30 seconds, before PO Thomas asked to see inside the bag twice. § 87(2)(b) asked PO Thomas, “Do you have a warrant?” to which PO Thomas replied, “Do I need a warrant to search you?” § 87(2)(b) said, “Yes, according to federal law.” All officers then exited the RMP.

When he exited the car, PO Thomas said, “Give me the bag” and attempted to snatch the bag from § 87(2)(b)’s hand. § 87(2)(b) backed up approximately three to four steps against an ice machine next to a store at the corner, identified by the investigation as “Big American Gourmet Deli.” § 87(2)(b) said that though there were individuals working inside of the store at the time of the incident, he did not see them outside the store. § 87(2)(b) also said that there was a camera outside of the store, but that it may not have captured all of the interaction because of the angle at which it was affixed. At most, according to § 87(2)(b) it may have captured his and the officers’ heads. There were no other cameras.

When he was in the corner, PO Thomas grabbed his left arm and twisted it (**Allegation A**). § 87(2)(b) expressed pain, but PO Thomas continued to twist his arm harder (**within Allegation A**). Another officer who had been sitting in the front passenger’s seat, identified by the investigation as PO Alverny Tavarez of the Bronx Strategic Response Group, placed his left forearm forcefully into the right side of § 87(2)(b)’s neck, and held § 87(2)(b)’s head to the side of the ice machine such that § 87(2)(b) shouted that he could not breathe. § 87(2)(b) stated that his breathing was restricted for approximately one second. PO Tavarez then removed his forearm from § 87(2)(b)’s neck and punched him once in the face and then elbowed him in the back of § 87(2)(b)’s head and neck, causing his head to bounce off the ice machine

(Allegation B). When PO Tavaréz did so, § 87(2)(b) screamed, “He hit me!” twice, and asked § 87(2)(b) to begin recording the incident. § 87(2)(b) could not recall how many times he was struck by PO Tavaréz. § 87(2)(b) stated that a uniformed black woman who was short and heavyset, who had been seated in the rear passenger’s seat, and who was identified by the investigation as PO Kia Kelly of the Bronx Strategic Response Group, discharged her pepper spray for approximately 15 seconds. § 87(2)(g)

#### **(Allegation C).**

PO Thomas then called for back-up. Less than one minute later, six more marked patrol cars arrived, each containing two officers. § 87(2)(b) stated that it felt like they “beat him up,” but he was not able to specify how or who did so. An officer, whom he described as a muscular white man in uniform, brought him to the ground. According to § 87(2)(b) his friends witnessed all of the interaction. He was transported to the 43rd Precinct stationhouse. When § 87(2)(b) informed officers that he was a veteran, he was held for approximately 20 minutes before being released with summonses for open container and disorderly conduct.

§ 87(2)(b) stated that he sustained a bruise to his right eye and left side of neck; swelling to his right elbow; a three inch scrape to the right side of his belly button and a two inch gash to his left side; and that a previous knee injury was aggravated. He sought treatment for these injuries at § 87(2)(b) Hospital. According to § 87(2)(b) he and his mother took pictures of these injuries upon his release (See Board Review 48-55).

### **Mediation, Civil and Criminal Histories**

- Following his interview at the CCRB on August 19, 2015, § 87(2)(b) declined mediation as an alternative to resolve his complaint.
- Because no NYSID number is available for § 87(2)(b) the undersigned is unable to conduct a search of his criminal history.
- The undersigned submitted a FOIL request to confirm if § 87(2)(b) filed a notice of claim regarding this incident, and will include the response in the case file upon receipt.

### **Civilian and Officer CCRB Histories**

- This is § 87(2)(b)'s first complaint with the CCRB.
- PO Thomas has been a member of the NYPD for seven years and has had seven other allegations involving four cases, none of which have been substantiated. § 87(2)(g)
- PO Tavaréz has been a member of the NYPD for six years and has had ten other allegations involving six other cases, none of which have been substantiated. Of these ten other allegations, four of them are allegations of physical force.

### **Potential Issues**

#### **Attempts to obtain video footage**

The investigation identified the corner store at 1440 Castle Hill Avenue as the "Big American Gourmet Deli." On August 10, 2015, the CCRB’s field team investigators conducted fieldwork at this location and noted an ice machine by the side of the store along Lyon Avenue

and that a camera pointed directly towards the vicinity of the ice machine. The investigators spoke to an employee of the store, § 87(2)(b) who stated that the store's owner, § 87(2)(b) was the only person who had access to the camera feeds. He stated that § 87(2)(b) came to work at the deli between the hours of 4 a.m. to 8 a.m. and provided § 87(2)(b)'s contact information. There were no other cameras on local businesses pointing towards the incident location.

On August 20, 2015, the undersigned travelled to the store and hand-delivered a subpoena for video footage. § 87(2)(b) who stated that neither § 87(2)(b) nor another employee, § 87(2)(b) were available, accepted the subpoena and stated that it would be available within two days.

On August 25, 2015, a staff member from the store called the undersigned and left a voicemail indicating that video footage was unavailable, because it had expired 15 days after the incident.

### **Attempt to contact witnesses**

A LexisNexis database search was conducted for § 87(2)(b) and § 87(2)(b). The search yielded 83 results for § 87(2)(b) and different variations of his name, and one phone number for § 87(2)(b) in his mid to late twenties, living in the Bronx. On September 2, 2015, the undersigned initiated a phone call to this phone number; however, there was no option to leave a voicemail. When the undersigned initiated a second phone call to the same number on September 30, 2015, a female individual who answered stated that no one by the name of § 87(2)(b) resided there. The LexisNexis database search for § 87(2)(b) yielded 91 results for § 87(2)(b) and different variations of his name, including two results for an individual in his mid to late 20s living in the Bronx. The undersigned also attempted to obtain contact information for § 87(2)(b) and § 87(2)(b) from § 87(2)(b). However, § 87(2)(b) stated that he did not have contact information for any of the three witnesses.

## **Findings and Recommendations**

### **Explanation of Subject Officer Identification**

- § 87(2)(b) was issued summons number § 87(2)(b) for disorderly conduct and summons number § 87(2)(b) for open container by PO Tavarez. During his statement at the CCRB on September 18, 2015, PO Tavarez admitted to interacting with § 87(2)(b) and identified PO Thomas and PO Kelly as his partners at the time of the incident. PO Thomas and PO Kelly also admitted to interacting with § 87(2)(b).
- Although § 87(2)(b) alleged that PO Kelly discharged her pepper spray, PO Tavarez admitted to discharging it. PO Thomas and PO Kelly stated that they did not discharge their pepper spray, and identified PO Tavarez as the officer who did so. Therefore, Allegation E is pleaded against PO Tavarez.
- No other officer was interviewed because the investigation determined that the dispositions would not be affected.

### **Allegations not pleaded**

- **Abuse of Authority: Stop** – § 87(2)(b) stated that he was holding a black plastic bag that contained an alcoholic beverage, (Great Stallion) which he was about to open before observing a marked patrol car. PO Tavarez, PO Thomas and PO Kelly all observed § 87(2)(b) with a container of beer, however, only PO Tavarez and PO Thomas observed § 87(2)(b) drinking out of it. The investigation credited the statements provided by PO

Thomas and PO Tavarez, who also issued § 87(2)(b) a summons for an open container and determined that it is likely that § 87(2)(b) who admitted that he “was about to open the can,” may have been consuming from the container. Furthermore, pleading a stop here would be a summons dispute, which does not fall within the CCRB’s jurisdiction.

- **Force: Physical Force** – § 87(2)(b) alleged that PO Tavarez placed his forearm against the right side of § 87(2)(b)’s neck while his head was pressed against the ice machine. However, PO Tavarez, PO Thomas and PO Kelly consistently stated that § 87(2)(b) falsely claimed that he could not breathe even before the officers made contact with him. The alleged chokehold also happened within the circumstances of the restricted breathing. Therefore, the allegations of restricted breathing and chokehold will not be plead against PO Tavarez. § 87(2)(b) also alleged that additional officers who arrived “beat him up”, but he was not able to specify how or who did so. Therefore, the allegations of physical force will not be plead against officers.

**Allegation A – Force: PO Mauricio Thomas used physical force against § 87(2)(b)**

**Allegation B – Force: PO Alverny Tavarez used physical force against § 87(2)(b)**

**Allegation C – Force: PO Alverny Tavarez used pepper spray against § 87(2)(b)**

By all accounts, including that of § 87(2)(b) he did not cooperate with the officers’ request for identification following their observation of § 87(2)(b) with an open container of alcohol. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) stated that following the initial stop, he attempted to walk away from the officers and in doing so, he was cornered between an ice box and a wall. He also stated that while he remained standing, officers twisted his arms, placed pressure on his neck to restrict his breathing, and punched him in the face. All officers denied elbowing § 87(2)(b) in the head, striking him (successfully) in his face, placing their arms on his neck, or restricting his breathing, but that § 87(2)(b) falsely claimed that he could not breathe even before the officers made contact with him. Because § 87(2)(b) continued to resist, PO Tavarez discharged his pepper spray. Despite the pepper spray, the officers stated that PO Tavarez continued to resist. PO Kelly then requested back-up, and when additional units arrived, § 87(2)(b) was pushed to the ground and then handcuffed.

Medical records from § 87(2)(b) Hospital Center indicate that § 87(2)(b) may have sustained injury as a result of his interaction with officers. He walked in on § 87(2)(b) p.m, and his chief complaint was “body pain,” and that he was “beaten by the cops.” The initial assessment notes general body pain, an abrasion to his face, two abrasions to his elbows, back pain and facial swelling.

Pepper spray may be used when a police officer reasonably believes it is necessary to affect an arrest of a resisting suspect, for self-defense, or to take a resisting emotionally disturbed person into custody Patrol Guide Section 212-95 (Board Review 60). Officers must use the minimum force necessary to affect an arrest. Patrol Guide, Section 203-11 (Board Review 57).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

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Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date